



Grievance Policy and Procedures for State-Aided Public Housing (760 CMR 6.08) 20 APR 10 PM 12:25:56

Adopted: April 13, 2020

Board Member Signatures

Maura Spingola, Chair

I. GENERAL OVERVIEW

State law requires each local housing authority to have a grievance procedure of which the purpose shall be the prompt and reliable determination of grievances.

A. Applicability -- This grievance procedure is available to state-aided public housing tenants, and to individuals who file appeals pursuant to 760 CMR 8.00 (Privacy and Confidentiality).

B. Definition of a Grievance:

1. Tenancy Related -- An allegation by a tenant that the Wellesley Housing Authority (hereinafter, the WHA) or a WHA employee has acted or failed to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the tenant or a household member;

2. Personal Data Related -- An appeal pursuant to 760 CMR 8.05 by an applicant or current resident who objects, with respect to data held by the WHA, to the accuracy, completeness, pertinence, timeliness, relevance, use, or dissemination of their personal data; or who objects to the WHA's denial of access to their personal data.

3. Except that the following shall not be subject to a grievance:

- i. The meaning of a statute, regulation, or rule;
- ii. A dispute between a tenant and another tenant or household member, in which the WHA is not involved;
- iii. Any grievance filed by a tenant on behalf of another tenant or any household member of another tenant;
- iv. Termination of tenancy pursuant to M.G.L. c.139, §19; and
- v. Termination of tenancy for nonpayment of rent

II. INITIATION OF A GRIEVANCE

A. Lease Termination -- A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant in writing, and shall be mailed (postmarked) or

delivered to the WHA at its main office, 109 Barton Road, Wellesley MA 02481, within seven (7) calendar days after notice of lease termination has been given to the tenant by the WHA.

- B. Other Matter -- A grievance regarding some other matter shall be initiated by a grievant in writing, and shall be mailed (postmarked) or delivered to the WHA at its main office within no more than fourteen (14) calendar days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided that the WHA shall have discretion to permit a grievance to be initiated late.
- C. Additional Time -- The WHA shall permit additional time for initiation of a grievance if the WHA shall find that there was good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the WHA.
- D. Grievance Hearing Request -- When initiating a grievance, the grievant shall submit a signed, written request to the WHA, specifying:
 - 1. The reason for the grievance, and
 - 2. The action or relief sought.

III. GRIEVANCES REGARDING REDETERMINED RENT

- A. In the event that a tenant files a grievance as to the amount of a re-determined rent within fourteen (14) calendar days of the WHA's notice of the re-determined rent, during the informal settlement conference process the tenant shall continue to pay the existing rent then in effect (unless the re-determined rent is lower) until final disposition of the grievance.
- B. Upon final disposition of the grievance, the tenant shall pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of re-determined rent or the WHA shall credit the tenant with any amounts paid but determined not to have been due.

IV. INFORMAL SETTLEMENT CONFERENCE

- A. Promptly, following the initiation of a grievance, unless otherwise provided, the WHA's Executive Director or their designee shall give the grievant the opportunity to discuss the grievance informally.
- B. Attempts shall be made to settle the grievance informally without the necessity of a grievance hearing. The WHA shall give reasonable advance notice to the grievant and their representative (if any) of a time and place for an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to the WHA.
- C. At the informal settlement conference, the WHA and the grievant may be represented by a lawyer or by a non-lawyer.
- D. Following the informal settlement conference, a summary of such discussion shall be prepared within fourteen (14) calendar days and one copy shall be given to the tenant

and one retained in the WHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor.

- E. If the grievance is resolved at the informal settlement conference, the WHA and grievant shall acknowledge the terms of the resolution in writing, and no formal grievance hearing shall be held.
- F. Failure to attend an informal settlement conference shall not affect a grievant's right to a formal grievance hearing.

V. RIGHT TO A FORMAL HEARING AND HEARING EXCLUSIONS

- A. Hearing Officer -- The WHA's impartial hearing officer, shall be a person other than the person who made or approved the action under review or a subordinate of such person. They shall conduct hearings on grievances filed by a state-aided public housing tenant or household member. The hearing officer shall be appointed in accordance with Appendix B of 760 CMR 6.00, Grievance Procedure Provisions for a Single Hearing Officer. Tenant organizations, if applicable, will be contacted for comment and the appointment of a Single Hearing Officer shall include tenant participation as detailed in Appendix B of 760 CMR 6.00, (See Appendix B, attached hereto and incorporated, herein.), and 760 CMR 6.09, LTO and Resident Participation.

VI. HEARING DATE AND NOTICE OF HEARING

- A. Scheduling -- The WHA shall schedule a formal grievance hearing to determine whether good cause exists for terminating a lease within fourteen (14) days or as soon as reasonably practical after the date on which the WHA receives the grievance. A hearing of a grievance regarding any other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.
 - 1. As such, the WHA shall set a date for the hearing no more than thirty (30) calendar days from the date of the request for a hearing (or as soon as practicable thereafter) and at least fifteen (15) calendar days prior to the date of termination.
 - 2. The WHA shall give the grievant and their representative (if any) reasonable advance written notice of the date, time and place at least seven (7) calendar days before the hearing.
- B. Treatment of Additional Reasons for Termination -- At the formal hearing, any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered:
 - 1. So long as the WHA has given written notice to the grievant as to the additional reason(s) not less than three (3) days before the hearing, or
 - 2. If the additional reason(s) for termination shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three days' notice to consider such reason(s).

- C. Suspension of Eviction Proceedings pending the Hearing -- In lease terminations, if the grievant is entitled to request a grievance hearing and has made a timely request, the WHA shall not file a summary process Summons and Complaint seeking an eviction pending the hearing and a Decision or other resolution in the WHA's favor.
- D. Rescheduling of Hearing -- The WHA or the hearing officer may reschedule a hearing by agreement or upon a showing by the grievant or by the WHA that rescheduling is reasonably necessary.
- E. Failure to Appear at the Hearing -- If the grievant or the WHA fails to appear at a scheduled hearing, the hearing officer shall determine that the party has waived their right to a hearing. The hearing officer may make a determination to postpone the hearing for a period not to exceed five (5) calendar days if good cause is shown within one business day of the original hearing date. Both the grievant and the WHA shall be notified of the determination by the hearing officer; provided however, that a determination that the grievant has waived their right to a hearing shall not constitute a waiver of any right the grievant may have to contest the WHA's disposition of the grievance in an appropriate judicial proceeding.

VII. PRE-HEARING EXAMINATION OF RELEVANT DOCUMENTS

- A. Prior to a grievance hearing, the WHA shall give the grievant or their Representative a reasonable opportunity to examine WHA documents, including records and regulations, that are directly relevant to the grievance.
- B. Following a timely request made no less than forty-eight hours prior to the hearing, the WHA shall provide copies of such documents to the grievant and, for good cause (including financial hardship), may waive the charge for the copies.

VIII. PERSONS ENTITLED TO BE PRESENT

- A. The grievance hearing shall be private unless the grievant requests in writing that it be open to the public.
- B. If the grievant requests an open hearing, the hearing shall be open to the public unless the hearing officer otherwise orders.
- C. The WHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing.
- D. A challenge to the presence of any such person shall be decided by the hearing officer.
- E. At the hearing, the WHA and the grievant may be represented by a lawyer or by a non-lawyer.
- F. Each person present at the hearing shall conduct themselves in an orderly manner or they may be excluded by the hearing officer.
- G. If the grievant misbehaves at the hearing, the hearing officer may take other appropriate

measures to deal with the misbehavior, including dismissing the grievance.

IX. PROCEDURE AT GRIEVANCE HEARINGS

- A. The hearing officer shall conduct the grievance hearing in a fair manner without undue delay:
 - 1. The hearing officer shall initially take appropriate steps to define the issues.
 - 2. Thereafter relevant information, including testimony of witnesses and written material, shall be received regarding such issues.
 - 3. Both the grievant and the WHA shall be entitled to question each other's witnesses.
- B. Procedures at the hearing shall be informal, and formal rules of evidence shall not apply.
- C. The hearing shall be tape-recorded by the WHA and may be tape-recorded by the grievant.
- D. The grievant or the WHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing.
- E. The hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations, and WHA rules and policies.
- F. The hearing officer may request the WHA or grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.
- G. The tapes of the hearing shall be maintained by the WHA until any applicable appeals have been decided. During that time, grievant or his or her representative may listen to the tapes at the WHA's offices.

X. WRITTEN DECISION BY THE HEARING OFFICER

- A. Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing officer shall provide the WHA with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, that shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies.
- B. In a grievance hearing regarding whether good cause exists for terminating a lease, "good cause" shall be found where the WHA has provided sufficient grounds upon which to terminate the lease. The WHA need not prove a lease violation by a preponderance of the evidence as in a civil proceeding. The preponderance of the evidence standard is understood to be a more rigorous standard than the "good cause" standard.

- C. The hearing officer may render a decision without proceeding with a hearing if it is determined that the issue has been previously decided in another proceeding.
- D. The decision shall be based on the evidence at the grievance hearing and such additional information as may have been provided to the hearing officer at his or her request.
- E. The WHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and their representative (if any).
- F. A copy of the decision (with names and personally identifiable information deleted) shall thereafter be maintained at the WHA and shall be open to public inspection.

XI. REVIEW BY THE WHA's BOARD

- A. Availability of WHA Board Review -- Either the grievant or the LHA may appeal the hearing officer's decision to the WHA Board. However, WHA Board review of a decision of the hearing officer is NOT available for grievances:
 - 1. Involving the termination of a lease.
- B. In other cases, in the event that the grievant or the WHA believes that:
 - 1. The decision of the hearing officer is not supported by the facts;
 - 2. The decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or
 - 3. The subject matter is not grievable, within fourteen (14) days mailing or other delivery of the decision, the grievant or the WHA may request a review of the decision by the WHA's Board.
- C. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the WHA and grievant to make oral presentations and/or submit documentation.
- D. The Board may also permit the hearing officer to make a presentation.
- E. The decision of the Board shall be in writing and shall explain its reasoning.
- F. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board when rendered shall specify a reason showing that there has been no undue delay.

XII. REVIEW BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

- A. With respect to grievances filed by state-aided public housing tenants, in the event that the WHA's Board shall make a material change in the decision of the hearing officer, the grievant may make a written request to DHCD for a review of the decision.

- B. Such request must be made in writing by the grievant within fourteen (14) days of mailing or other delivery of the decision of the Board.
- C. DHCD shall review the decision of the Board and shall render a written Decision upholding, setting aside, or modifying the decision of the Board.
- D. DHCD shall mail copies of its decision to the WHA and the grievant or to their attorneys.

XIII. EFFECT OF A DECISION ON A GRIEVANT

- A. The decision on a grievance shall be binding between the WHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance.
- B. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court.
- C. As between the WHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.
- D. Except as otherwise provided herein, in the event the hearing officer's decision on a grievance determines that good cause exists for terminating the lease, the WHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no further review by the Board or DHCD.

APPENDIX B- Grievance Procedure Provisions for a Single Hearing Officer

(1) **Appointment of Hearing Officers and Jurisdiction.** This grievance procedure adopted by the Wellesley Housing Authority (WHA) requires a hearing and determination of a matter subject to the procedure by a single hearing officer. The hearing officer shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing in the city or town.

Under this procedure the WHA shall from time to time nominate one or more persons to serve as hearing officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The WHA shall submit its written nomination(s) for hearing officer(s) to each affected Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which they are nominated. Within five days of receipt of a nomination any affected LTO may make a written request to the WHA to interview the nominee. Following such a request for an interview by an affected LTO, the WHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any affected LTO may approve or disapprove the nominee by giving written notice to the WHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all affected LTO(s) shall approve a nominee or if no affected LTO shall disapprove a nominee within the requisite time, the nominee shall thereupon become a hearing officer upon written acceptance mailed or delivered to the WHA which shall notify the LTO(s).

Each hearing officer shall annually certify to the WHA that they are ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the WHA shall render the hearing officer's position vacant.

(2) **Impartiality of the Hearing Officer.** A hearing officer or a member of their family shall not have and shall not appear to have any direct personal or financial interest in the outcome of any matter before them. No hearing officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No hearing officer may determine matters which directly concern their own housing or the housing of a family member or their own status or the status of a family member in that housing. Each hearing officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any hearing officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove themselves as hearing officer, whether or not he has been requested to do so.

(3) **Removal of the Hearing Officer.** A hearing officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The WHA and the affected LTO(s) may agree on removal after notice to the hearing officer and the opportunity for them to be heard. In the absence of agreement, DHCD (The Department of Housing and Community Development) may remove a hearing officer for cause upon a request by the WHA or the LTO. Prior to removing a hearing officer, DHCD shall require a detailed written specification of the reason(s) for removal and, if it finds the specification to set out good and sufficient cause, shall give the hearing officer, the WHA and the LTO(s) the opportunity to be heard. DHCD's decision whether to remove a hearing officer shall be in writing mailed to the hearing officer, the WHA, and the LTO(s).

If a written specification fails to detail good and sufficient cause for removal, DHCD shall deny a request for removal without a hearing.

(4) Appointments of Interim Hearing Officers. If there shall not be a hearing officer able and willing to serve for one or more pending matters and if use of the appointment process in section (1) of this grievance procedure would likely cause significant delay with potential adverse consequences to either the WHA or the grievant, the WHA with notice to the affected LTO(s) may request that an interim hearing officer be named by DHCD. Such a request shall be in writing and shall specify the reason for the request. The affected LTO(s) shall be given a reasonable opportunity to comment on the request. If DHCD finds there to be a reasonable need for an interim hearing officer, DHCD shall name an interim hearing officer. DHCD may name a previously disapproved nominee to serve as interim hearing officer if it finds that the LTO's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim hearing officer shall have all the powers and duties of a hearing officer and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by an WHA to be hearing officer in the manner set out herein.

(5) Scheduling. The WHA shall be responsible for scheduling and other administrative matters, including all necessary notices.

(6) Procedural Provisions. The provisions of 760 CMR 6.08(4) are incorporated by reference into this grievance procedure. These provisions include: (a) the provisions regarding the time and method for initiating a grievance; (b) the requirement of a pre-hearing informal settlement conference between a grievant and the WHA about the grievance; (c) the provisions regarding the WHA's setting a hearing date and giving notice to grievant; (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing; (e) the provisions regarding who may be present at the grievance hearing; (f) the procedural requirements for the conduct of grievance hearings; and (g) the requirements regarding a written decision following the grievance hearing.